BETTY J. THOMAS

IBLA 81-693 Decided July 29, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease drawing entry card. M 49141 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

An oil and gas lease drawing entry card is properly rejected under 43 CFR 3112.2-1(b) (1980) where it is not signed holographically (manually) by the applicant or by someone authorized to sign on her behalf. BLM is not barred from rejecting the offer either by its acceptance of applicant's filing fee or by its publishing of applicant's name as the first drawee.

APPEARANCES: Charles S. Chapel, Esq., and Jerry E. Perigo, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

The simultaneous noncompetitive oil and gas lease drawing entry card (DEC) of Betty J. Thomas for parcel MT 133 was drawn with first priority in the September 1980 drawing in the Montana State Office, Bureau of Land Management (BLM). Thomas' DEC was not signed manually. In the space provided for the applicant's signature the name "BETTY J. THOMAS, PRINCIPAL" was typed, and in the space provided for the agent's signature "By: [blank] Attorney-in-Fact" was typed. Apparently, Thomas' agent neglected to sign the DEC, although a space was clearly reserved on the DEC for this purpose.

On April 30, 1981, BLM issued a decision rejecting Thomas' DEC because it was not holographically (manually) signed in ink by someone authorized to sign on behalf of the applicant, as required by 43 CFR 3112.2-1(b) (1980). Thomas filed a timely notice of appeal of this decision.

[1] The governing regulation, 43 CFR 3112.2-1(b) (1980), provides as follows:

> (b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

Appellant's DEC was not manually signed in ink, either by her or by anyone authorized to sign on her behalf.

Appellant argues that her typed name sufficed as her "signature," citing Elizabeth McClellan, 45 IBLA 342 (1980), where we approved the use of a rubber-stamped facsimile because the applicant intended it to be used as her signature. This case was decided prior to the enactment of the controlling regulation, cited above, which forbids the use of mechanical or facsimile signatures, such as a typed "signature." Thus, this case is inapplicable to appellant. In any event, we are not persuaded that appellant intended that the typewritten name to be her signature, because it appears that her agent was meant to sign the card but simply forgot to do so.

In view of appellant's failure to file her DEC in accordance with 43 CFR 3112.2-1(b), BLM properly rejected it following its selection. Under 43 CFR 3112.6-1 (1980), "[r]ejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned. (a) Improper filing. Any application which is not filed in accordance with § 3112.2 of this title * * * shall be rejected."

Appellant argues that the Department is estopped from rejecting her DEC because, by accepting her application service fee, it implicitly approved the validity of her card, as "each applicant is entitled to either [sic] have his or her application rejected prior to inclusion if [BLM] is to accept and not refund the requisite fee." This is incorrect. Under 43 CFR 3112.6-1 (1980), of which appellant is charged with constructive notice, BLM's "[f]ailure to identify a filing as unacceptable prior to selection does not bar rejection after selection * * * for any reason set forth in § 3112.6 of this title." See 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance v. Merrill, 332 U.S. 380

(1947). Moreover, the cited regulation expressly advises applicants that the filing fee will be retained even if the DEC is rejected. The filing fee is charged to cover the costs of administering the simultaneous noncompetitive drawing system. Collection of this fee creates no right or entitlement and does not bar the Department from rejecting a defective DEC during adjudication following selection.

We also note that appellant's demand for a predrawing review of the validity of each DEC ignores the practical difficulties of administering the vast number of DEC's filed with BLM. For example, 51,810 DEC's were filed with the Montana State Office, BLM, in September 1980 alone. In July 1980, the Wyoming State Office received 322,275 DEC's. When such numbers are involved, it is reasonable for the Department not to give special consideration to those who do not comply with governing regulations. Federal Energy Corp., 51 IBLA 144 (1980).

We reject appellant's argument that the Department is estopped from rejecting appellant's DEC after having published the results of the drawing and after appellant had engaged in negotiations with third parties to sell her interest. In view of the regulations, which make it abundantly clear that a DEC can be rejected even after selection, and in view of the fact that BLM's published list also named applicants with second and third priorities who would replace her, 1/ she could not reasonably have believed that she had any vested interest to sell. Moreover, BLM certainly did nothing to engender such a false belief. The regulations specify the manner in which a "successful" applicant will be notified, to wit, by forwarding a lease agreement and stipulations, if any, to the applicant. 43 CFR 3112.4-1. BLM took no such action here, so that appellant had no basis on which to believe that she had been "successful." 2/

Finally, we are unpersuaded by appellant's assertion that her DEC has not been rejected because it has not yet been returned to her. Return of a DEC, although it does indicate rejection, is not the only means of rejecting a DEC, and BLM may also properly do so in writing by decision, as it did here. 43 CFR 3112.3-1(c). The purpose of issuing a decision in these circumstances is to retain the DEC in the file, so that, in the event that the rejection is appealed, the Board can review it to see if BLM acted properly. In this case, BLM properly rejected appellant's DEC and notified her of the rejection by decision.

1/ By drawing three DEC's for each parcel, the Department provides for the possibility that a winning DEC will be found to be defective after selection and avoids the necessity of having to hold another drawing, since either the second or third DEC will probably be valid.

2/ We do not hold nor imply that BLM's notifying an applicant that he was successful under 43 CFR 3112.4-1 would bar its subsequently taking action to reject the offer, for 43 CFR 3112.6-2 expressly provides to the contrary.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge